

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ACCRUED FINANCIAL
SERVICES, INC.

v.

PRIME RETAIL, INC., ET AL.

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* Civil No. JFM-00-2474
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FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
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MEMORANDUM

On June 19, 2000 I dismissed an action filed by Accrued Financial Services, Inc. ("AFS") against Prime Retail, Inc., et al and other defendants. AFS has filed an appeal, and the appeal is presently pending. Thereafter, AFS filed in the Circuit Court for Baltimore City a complaint identical to the one I previously dismissed. It simultaneously filed a motion to stay, pending resolution of the appeal in the earlier case. Defendants removed the present action to this court. They have opposed AFS' motion to stay and filed a motion to dismiss.

The motion to dismiss will be granted as to the nine claims I previously dismissed. These claims clearly are barred by res judicata. AFS' argument that a second filing should be permitted to protect the rights of the tenants whom AFS purports to represent is unavailing. If, as I have held, AFS lacks standing, its filing of the second action will not protect the tenants' rights at all. If they desire to protect their rights, they must institute suit themselves.


The two claims asserted by AFS in its own right over which I previously declined to exercise supplemental jurisdiction present a different question. AFS contends that it is compelled to file the second action now because it is unclear whether a plaintiff seeking to invoke the benefit of Maryland Rule of Procedure 2-101 must file an action within thirty days of a trial court's dismissal of an action on jurisdictional grounds (rather than within thirty days of

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appellate resolution of the jurisdictional issue) in order to avoid a limitations bar. Apparently, no court has decided the issue. Accordingly, AFS has acted prudently in promptly refiling in the Circuit Court for Baltimore City the two claims over which I declined to exercise supplemental jurisdiction. I will stay, rather than dismiss those claims, with the expectation that if my earlier ruling is affirmed on appeal, I will remand the remaining two claims to the Circuit Court for Baltimore City. In the interim, I will administratively close this case.

A separate order effecting the rulings made in this memorandum is being entered herewith.

Date: *October 11, 2000*



J. Frederick Motz
United States District Judge